

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
January 25, 2016 at 6:00 P.M.
North & South doors of the Historic Courthouse open at 5:40 P.M.

PLEDGE OF ALLEGIANCE: A moment of silence was held followed with the Pledge of Allegiance.

Members Present: Terry Dayvolt, Doris Horn, Mike Moesner, Jeff Valiant, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, and Molly Barnhill, staff.

Members Absent: Tina Baxter

ELECTION OF OFFICERS:

Mrs. Rector stated the first order of business is to elect a Chairman of the Warrick County Board of Zoning Appeals to serve during 2016. She asked if they had any nominations.

Mike Winge made a motion to nominate Jeff Valiant to serve as Chairman. Jeff Willis seconded the motion.

Mike Moesner made a motion to close nominations and elect Jeff Valiant as Chairman by acclamation.

Jeff Valiant stated the next order of business is to elect a Vice-Chairman of the Warrick County Board of Zoning Appeals to serve during 2016.

Mike Winge made a motion to nominate Terry Dayvolt. Doris Horn seconded the motion.

Mike Moesner made a motion to close the nominations and elect Terry Dayvolt as Vice-Chairman by acclamation.

SET MEETING DATES, TIME, AND PLACE:

Mike Winge made a motion the regular meetings are to be held on the 4th Monday at 6:00 PM of each month in Commissioners Meeting Room, Third Floor, Court House, Boonville, Indiana; except for December (will be December 19, 2016, 3rd Monday) due to the holidays. The motion was seconded by Doris Horn and unanimously carried.

ADOPTION OF RULES AND REGULATIONS:

Mrs. Rector stated they are working on some time limitations and different things from the Planning Commission so she would ask that they adopt the 2015 Rules and Regulations for this meeting and they will have it back on the agenda in February.

Jeff Willis made a motion to adopt the Rules of Procedure. The motion was seconded by Mike Winge and unanimously carried.

MINUTES:

Jeff Willis made a motion to approve the December 21, 2015 minutes as circulated. The motion was seconded by Doris Horn and unanimously carried.

SPECIAL USE:

BZA-SU-16-01

APPLICANT: Midwest Maintenance and Construction Co., Inc. by Justin Schleicher, Project Mgr.

OWNER: Kocolene Marketing. LLC by Terry Jared. Op. Supp. Mgr.

PREMISES AFFECTED: Property located on the N side of Bell Oaks Dr. approximately 0' NW of the intersection formed by Bell Oaks Dr. and Merchant Dr., Ohio Twp. *Complete legal on file. 8177 SR 66*

NATURE OF CASE: Applicant requests a Special Use, SU8, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an electronic message board in a "C-4" General Commercial Zoning District. *(Advertised in The Standard January 14, 2016)*

Terry Jared, Operating Supply Manager, and Justin Schleicher, Project Manager were present.

The Chairman called for a staff report.

Mrs. Rector stated they are missing one green card from Maken Corporation but we have all white pay receipts showing they were mailed within the 21 day deadline and to the correct address; so when they get the green card back they will need to bring it in. She stated all surrounding property is zoned "C-4" General Commercial with various businesses. She said there is no flood plain. She said there are two entrances off of SR 66 and one off of Bell Oaks Drive. Mrs. Rector said their proposed use statement states "The station is currently branded Fast Max and will be offering Sunoco Branded gasoline. The new price sign cabinet with LED pricers will be consistent with the re-branding to Sunoco." She added they should all have copies of their new signage in their packets. She said the existing sign is in the ROW for SR 66 and also in a 10' Segico Easement, however the new sign has been relocated further back from the road as shown on the plot plan. She said the application is in order and she believes the message board is to change the price of the gasoline.

Justin Schleicher said yes that is correct.

Ascertaining no remonstrators present and no questions from the Board the Chairman called for a motion.

I, Mike Winge, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained for the new message board.
4. Subject to any required Building Permits being obtained.
5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
6. Subject to no use of the words, 'stop', 'danger', 'look', or any other word which would confuse traffic.
7. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Jeff Willis and unanimously carried.

Mrs. Rector stated they will have the approval done by Wednesday and then they can come in a get their permit.

VARIANCE:

BZA-V-16-02

APPLICANT/OWNER: Delta Properties. LLC by Steve Kahre, Owner

PREMISES AFFECTED: Property located on the S side of Industrial Park Dr. approximately 1000' E of the intersection formed by Old SR 57 and Industrial Park Dr. Greer Twp. Lot No. 8 in North Warrick Industrial Park Subdivision. *11733 Industrial Park Dr.*

NATURE OF CASE: Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a distribution center with a relaxation of 85 required parking spaces. Per ordinance 164 parking spaces are required they request only 79 spaces in an "M-2" General Industrial Zoning District. (*Advertised in The Standard January 14, 2016*)

Jim Morley Jr., Project Engineer was present.

The Chairman called for a staff report.

Mrs. Rector stated we have all of the green cards except for one from the Warrick County Redevelopment Commission. She said we do have the white pay receipt showing it was mailed before the 21 day deadline and to the correct address. She said the properties to the North, South, and East are zoned "M-2" General Industrial and are vacant; property to the West is zoned "M-2" with a manufacturing plant; property adjacent to the Southwest is zoned Agricultural and is vacant. She said there is no flood plain and their access is off of Industrial Park Drive. She said an Improvement Location Permit has been issued for the distribution center showing all of the required parking. She said they are asking to reduce the amount of required parking so they may split the lot which will cut into their parking area. She added that the application states they plan to employ 120 people at this facility. She said they are asking for a relaxation of 85 parking spaces; per our ordinance 164 parking spaces are required, they request only 79. She said this type of parking is based off of, and we don't have a distribution center in our ordinance so it is based off of manufacturing or warehousing which is 1 for every 500 square feet. She said you can tell by the size of the building and the number of employees our ordinance is over exceeding what they are going to need.

Jim Morley Jr. said the parking that is required is what was asked for by the tenant; they do not need additional parking, that is all that they will ever want. He said they wanted to go ahead and get the Variance so there is no encumbrance on the title for the vacant ground next to it to split or whatever they do.

Mike Moesner asked if the 120 people that are going to be employed will be working different shifts.

Jim Morley Jr. said they will be working different shifts. He said they are not all there at the same time and by doing it this way and getting the variance they do not have to pave extra parking which leaves more green space.

Doris Horn asked if they were hoping to divide that lot in the future.

Jim Morley Jr. said it is undetermined at this time but as long as the idea that we may have to have additional parking out there, it is an encumbrance on the title so we want to get it taken care of now. He said it clears up the title as far as any financing or anything like that goes.

The Chairman asked if it was a two or three shift operation.

Jim Morley Jr. said he did not know.

Mike Moesner asked what kind of distribution was this.

Jim Morley Jr. said they have a confidentiality agreement so he is not allowed to say, only that they will recognize the name; it is a good company.

Ascertaining no remonstrators present and no more questions from the Board the Chairman called for a motion.

I, Mike Winge, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is potential division of the lot.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.

7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.

8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.

9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.

10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:

- a) Subject to amending ILP 2016-005.
- b) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- c) Subject to all utility easement and facilities in place.

The motion was seconded by Doris Horn and unanimously carried.

Mrs. Rector said they will have their approval ready to pick up Wednesday.

SPECIAL USE: Continued from December 21, 2015 meeting.

BZA-SU-15-21

APPLICANT: Warrick County Economic Development Department, by Larry Taylor, Executive Director.

OWNER: Warrick County Department of Parks & Recreation, by Daniel Roach, Pres.

PREMISES AFFECTED: Property located on the E side of Anderson Rd. approximately ½ mile N of the intersection formed by Anderson Rd. (W 600) & Oak Grove Rd. (S 300), Ohio. Twp. *Complete legal on file.*

NATURE OF CASE: Applicants request a Special Use (SU 11) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a public park in an "A" Agriculture zoning district. *Advertised in the Standard December 10, 2015.*

Tom Kimpel, Attorney was present.

Mrs. Rector stated that we have all return receipts but she is not sure if we have the green cards for Karim Anwar & Saira Karim. She said we will have to check on that; if not they need to bring it in when they get it. She said the existing land is vacant. She said the property to the

north is zoned "R-1D" & "C-2" being Victoria Manor and Victoria National Golf Club Minor property; East is "C-2" and "PUD" being part of Victoria National Golf Club Minor property and Cottages at Victoria; south is "M-2" being vacant Maken Corp. property and to the West across Anderson Road is Agriculture being Blue Lake Estates Subdivision. She said there is no flood plain. She said they are proposing to construct a roadway into this off Oak Grove Road. She said they will need to purchase the property from Maken Corporation if it has not been done yet. Mrs. Rector said the applicant's statement says *"The proposed use for this area is a public park that will serve all residents of Warrick County with over 1.5 miles of paved pathways, a gathering area, two pavilions, two public bathrooms, a playground, and a park maintenance building. There will be sufficient paved parking areas as well as additional non-paved parking areas for occasional events."* She added that this property was deeded to the Park Department in 1993 from Lake Group but has never been utilized as a park. She said today, via email, Tom Kimpel, Attorney for the Department of Economic Development, submitted a set of conditions the Economic Development Department and the Parks Board have reviewed and agree should be made part of the Special use for Friedman Park. She said a copy of the conditions and photographs are included in each packet. She said they are going to purchase right-of-way to the new Oak Grove Road back to this property from Mr. Ubelhor with Maken Corporation, so as one of the conditions will be the road construction plans are submitted and approved by the County Engineer and it will be built to county standards. She said she believes it will more or less be built by the County.

Tom Kimpel said with him tonight is Larry Taylor, the Executive Director of the Department of Economic Development. He said also with him is Dan Roach, the President of the Park Board, also Jeff Justice with Hafer, the architect for the park, and Jim Morley Jr. with Morley and Associates, the engineer for the park. He said he wants to point out a few more people that are here in favor of the park. He said Don Williams, the President of the County Commissioners; they put the park project in the capital improvement plan. He said Gary Meyer is here, he is the President of the County Council who approved an appropriation necessary for the building of the park. He said the park is located northeast of the intersection of Anderson and the new Oak Grove Road; the entrance will be from Oak Grove Road into the park. He said the park land is approximately 180 acres which includes a large lake to the north that abuts residential development in Victoria Subdivision and the golf club. He said the County obtained this property back in 1993 before Terry Friedman came to Warrick County and developed any subdivision or country club. He said the conditions are not overly complicated or long; they have tried to address conceptually what the plans are. He said this will be a public works project and will be up for public bid and they will have to do construction plans that meet their budget but the intent is to show the quality of improvements. He said the park will be a dawn to dark park except when users sign written user agreements with the Parks Department and in those instances events will have to conclude at 10:30 except in very limited exceptions which will be approved in a public meeting with the Park Board. He said they spent a lot of time putting in conditions that address the amphitheater staging it so it is directed to the south with a lot of landscaping, specifically trees that are least 15 feet in height, two rows, earth and berm to not only add visual aesthetics but also provide sound buffer. He said there will be no public fishing, swimming or boating except on the south side of the lake where the park property is there will be designated areas where users will be able to enjoy that from the shore line. He said lighting will be shielded and down focused. He said maintenance will be by the park board and users of the

park that no unreasonable noises will be emitted from the park; it is a reasonable man standard which is what the State law has in effect. He said the first condition, which is unique here because the owner and developer is a public body, not a private industry. He said it is the Park Board which by State law is charged with the responsibility and authority to own, operate, and maintain county parks. He said they are further charged with making rules and regulations regarding the use of the park. He said State law also states that the Park Board is invoked with the legal, equitable, and special authority to enforce in court these laws, rules, and regulations. He said otherwise it is a public body created by State law that has specific authority in regards to operations and maintenance of the park. He said his point is the Park opens, begins to operate, people have a public body to go to and talk about any issues that they may have; it is not like a Target.

Larry Taylor approached the podium. He said he wanted to reinforce that this is a county wide collaboration. He said this 180 acres of land that has been owned by the county has been an unused asset. He said it is designed as a low impact park; there are a lot of walking features, wildflowers, and trees to keep the natural beauty of it. He said it is Boon Township between Anderson Road and Alcoa Highway so it is centrally located in the county and readily accessible to the majority of the population in Warrick County including Boonville, Chandler, Yankeetown, Newburgh, and Ohio Township. He said the quality of life and a healthy environment is something that has been mentioned by many industries they are trying to attract. He said when he started 7 years ago that was probably one of the last things on the list; people were looking at the cost of land and taxes but it has shifted now to work force. He said the question is now is there enough qualified people in the area to staff our workforce and a lot of these requirements are professional people, graduate engineers, and all that, so we want to put more an emphasis of quality of place to keep our children coming back to the area as well as making it a desirable place for other people to move to. He said many developments across the country have amenities such as this one so they think it will encourage residential development in the area and be a nice asset. He said they have engaged top professionals in the area to make sure it is an asset to the county. He said it is designed to provide amenities for the whole county to be used by schools, churches, and civic organizations. He said they are proud of the design and ask for their approval.

Dan Roach approached the podium. He said the Parks Board is five appointed members and they operate four properties in Warrick County; Warrick Sports Complex here in Boonville, Van Road Ball Park in Newburgh, Scales Lake, and Freidman Park. He said they meet two times a month on the first and third Tuesday of every month. He said when they set out to do this project they wanted to provide a community asset that will serve the surrounding areas, and provide a green space, playgrounds, and gathering spaces for families in the area; they also wanted to compliment the area surrounding the park. He said this is in a fast growing area of Warrick County. He said it has been designed to complement all of the areas around. He said in the past the Parks Board has proven to be good neighbors and the operate making themselves very accessible to the public. He said they are comfortable with the conditions and the rules will be in the spirit of those conditions when they design them. He said the Board is in full support of this plan and they are excited about it.

Jeff Justice approached the podium. He said he is here to give them a quick overview of the park. He said you will be able to approach the park from the south from the Oak Grove extension where you will be greeted by mounds that are colorfully landscaped and after you go through the entrance you will be greeted by a variety of different landscaping and environmental features that are added to and will enhance the natural terrain and vegetation that already exists there. He said they will be adding lots of indigenous trees that will provide color throughout the seasons. He said there will be sixteen and a half acres that will be wildflower meadows that will be humming bird and butterfly gardens and there will be over twenty-three acres of open lawn that will be available for a variety of activities. He said all of these natural experiences will be framed and organized by trails and paths that go through the park; there will be almost 1.9 miles of trails that are divided into loops of 1/3, 1/2 mile, and 1 mile. He said there will also be a bike path that forms the southern edge of the property; it is about 1 1/3 mile long and it will connect into the Warrick Pathway system that is envisioned. He said there will also be two pavilions located on high points on the property that overlooks the lake and park and other amenities. He said those pavilions will house about 150 people in one and 75 in the other. He said there has been some conversation about a gathering space in the park that is located in a natural bowl down near the lake but when they went to the site...he wanted to located it right out on the lake but they decided it would be best to pull it back away from the lake so it still faces south and they can leave the existing vegetation behind the performance area and also add more vegetation to help absorb any sound that may arise there. He said they also located and created the seating area in the grassy lawn to help absorb sound and added more trees to create different patterns of reflection for any sound that is created. He said there is a natural playground on the property that will be unique and there will be safety features with that and accessible for all types of age groups or anyone with disabilities. He said there is a maintenance building tucked in the corner of the park that will be landscaped and there are restrooms located strategically near the activity center. He said there are 194 paved parking spaces and an area that could accommodate 412 parking spaces in a grassy area but that area is also multidimensional because it can serve as a place for art shows, car shows, and other shows that the park will attract. He said the lighting has cut-off lenses that direct all of the light down so they avoid illumination of the night sky. He said they are excited about the project and they have worked diligently to enhance the natural character of the property that they believe will make a wellness centered, destination park for their county.

Jim Morley Jr., Project Engineer approached the podium. He said this piece of property has a rolling terrain to it which means they won't have to disturb much ground; they were able to situate all of the structures on natural bluffs to have views of the lake or open lawn area. He said a park like this is a win/win for everybody. He said it is a win for the County because they are able to get a great asset and it is a win for the area because it is a very low impact use. He said it has very little runoff, noise, light, or traffic. He said if this same property was going to be a subdivision it would have a lot more of all of those. He said they wanted to park had a good framework to hang from. He said it will be a public roadway that comes into the park, the park itself will be all paved roads, it will be a public water system inside of the park to take care of all fire needs, there will be a private sewer system, and there is plenty of parking so the infrastructure is in place to make this a great facility. He said currently it is an ag. zoned piece of property and it will stay that way; it is all green now and it will stay green. He said they looked at different ideas for hard surfaces and they tried to minimize those where possible to give it a

more natural feel. He said for a land and design standpoint this piece of land is really tailor made for a park like this.

Danny Ubehlor, President of Maken Corporation approached the podium. He said they own the land to the south of the park and they think it a great asset to the community. He said as a developer people have been asking for something like this. He said they will also be donating the right-of-way for the road.

Steve Rolly, Board Member of Warrick Trails approached the podium. He said they are a non-profit group with a goal of having 30 miles of trails and lanes by 2018. He said the park is not one of their projects but it compliments really nicely in bringing up the quality of life to the county. He said the trails they are laying out, they are working with the county, the school board, private donations, and corporate donations to make this happen. He said the 30 miles will reach across the county. He said they will connect to the river town trail to the south, go to the west over by St. Mary's, and they just received funding to connect the path to Boonville that will come into Roeder Road right into Friedman Park. He said some of the other places will be Anderson Road, and Vann Road connecting the ball fields where the kids play and go to school. He said Warrick Trails is excited about this project. He said he is an active guy, his wife is active, he is on the triathlon team for 3 years; 262 people that are grandparents, students, parents. He said he has talked to them and they are all excited about the park. He said he lives in Lakeridge right across Anderson Road so this park will impact him and his two kids will grow up in this park so as somebody that is going to use the park...he can't wait.

Mike Winge asked if this is approved what is the timeline on it.

Tom Kimpel said as soon as they get the approval the architects and engineers will finalize construction plans and would love to bid the construction this spring and start construction this summer with a grand opening in the spring of 2017.

Mike Winge asked what the costs involved are.

Tom Kimpel said they are working the engineers on that but with the blessing of the County Council they feel they have a budget that will be able to deliver this park.

Mike Moesner asked if this will be fenced in with a gated entry.

Tom Kimpel said no it will open like the other parks.

Mike Moesner said so you don't need a gate person.

Tom Kimpel said no, this will not be like Scales Lake. He said there is no admission fee and it will be accessed from a public road.

Terry Dayvolt said the hours will be dawn to dusk.

Tom Kimpel said yes.

Terry Dayvolt asked who will oversee that after dusk.

Tom Kimpel said they have talked with the Sheriff's department and once the park is developed the Sheriff said he would patrol the park the same as the other parks; he said in Warrick County they have not had a lot of problems with the parks with either vandals or people entering it and he doesn't foresee any problems.

Jeff Willis asked about the hours because it gets dark in December at 4:00 so for three months out of the year it will be unusable to anybody who works.

Dan Roach stated it will be a passive park so after dark there won't be much to do there; they are not going to have a lot of kids out in this kind of weather.

Jeff Willis said he was wondering about the joggers who would want to go after work.

Tom Kimpel said the problem there would be lighting that much of the trail and that would create more of an issue.

Terry Dayvolt asked what portion of the park is going to be lit.

Jim Morley said what is budgeted now is to light the heart of the park where the gathering space, pavilions, some of the parking, and playgrounds are. He said some of that will be determined by budget.

Terry Dayvolt asked about the amphitheater.

Jim Morley said that is part of that.

Doris Horn asked how many people could get into the amphitheater.

Jeff Justice said the amphitheater does not have individual seating but he would say in the neighborhood of 300-400 people.

Terry Dayvolt asked if they have that many people do they have enough parking.

Jeff Justice said yes, there is 194 paved spaces and 412 grassy spaces.

Mike Moesner asked if they are going to have limited swimming or no swimming.

Tom Kimpel said no swimming on the lake, only fishing on the south end.

Jeff Valiant asked with the park location next to Victoria is there any chance of the park being closed for events going on in Victoria if they are using it for parking or something.

Tom Kimpel if Victoria has a golf tournament it would only be one week of the year and one of the things the County Council wanted them to do was to put some revenue generating

opportunities here so if it would be closed they would be required to pay a fee to be able to subsidize the maintenance of the park.

The Chairman called for remonstrators to step forward.

Krista Lockyear, Attorney for Victoria Lakes Neighborhood Association. She said she would like to thank the County for meeting with her clients and agreeing to the conditions that are part of the application. She said you can imagine how her clients felt when they found out about a large park and large amphitheater going in right across the lake from their homes that could disrupt their lives, affect property values, etc. She said she thinks the county has good intentions and has a good team behind them so they are excited about the quality of the project. She said the one thing they are concerned about is the noise. She said they have the berm and the buffer that the parks department is going to install that should shelter the noise, however, they have heard in other experiences where there are concert type atmospheres going on and the noise levels that you have to deal with so as the conditions they have before them do not have any ascertainable standards for noise we would like to add to the conditions submitted a decibel level at the property line. She said Evansville has a noise ordinance that has the 75 decibel level at the property line; Chandler also has one. She said it is a measurable level. She said at this point they are concerned that they will have neighbors who can't get to sleep at night, end up calling the sheriff's department, and they don't know how to determine if they are violating the commitments they have made at this point. She said initially they talked about allowing the neighbors to enforce the conditions that they agreed upon; they are not interested in that idea and that's fine but that leaves us with the Board of Zoning Appeals and Area Plan Commission having to enforce whether or not they are violating the noise level. She said they would like to see that limit of 75 decibels imposed.

Don Williams, President of the County Commissioners approached the podium. He said he appreciates what Mrs. Lockhart has said but he believes that 75 decibels is for business and residential property and he does not think it pertains to parks. He said this property has been sitting there for 22 years producing no income and it is very valuable property. He said the fact they are going to be producing some income is admirable. He said they bought a decibel meter and at a public meeting similar to this one, when they having their discussions the decibel reading was higher than what they are asking. He said the Warrick County Board of Commissioners is behind this project. He said before any home was built on the north side of the lake, the Parks Board owned that lake and the 180 acres to the south and it was there long before any home moved in. He said he thinks this is a reasonable use which will provide income to the Parks Board in improve Warrick County so he asks that they approve this application.

Nicole Bow approached the podium. She said she is a resident in Victoria Estates. She said she into the fitness area of the county and this addition will provide the residents and children a great opportunity to get fit and battle obesity in the county. She said she appreciates everything they have done to buffer the noise, it is a concern for the residents but she thinks this will be a great addition to the neighborhood.

Janice Miller approached the podium. She said she has been a resident of Warrick County for over 60 years now; they have lived across the lake from park for the last 10 years. She said they have watched the park for ten years because it is their back yard. She said they are excited about

the park coming in because they have seen the pictures and it is very exciting. She said her and her husband are concerned because in the past they have gone to the Parks Board and have asked for the park to be mowed and they have been told there is no money to mow. She said they have asked about the squatters that come and camp out over there; they ask about the fire. She said they remember the huge fire that happened several years ago so she looks at these proposed fire pits and that is a huge concern for her. She said if you don't have a gate for the park and kids can go in a see fire pits then they will have fires and they had a huge fire that threatened their homes. She said that is one of the highest parts in Warrick County so they have a lot of wind, so when they had the big fire across the lake the fire departments were over there because they were thinking it would jump the lake. She said without a gate she thinks they have a problem; what does dawn to dusk mean. She said she is all for churches using the park but what if they start using it every Sunday morning and have the praise band there. She said her biggest concern is that there are not enough rules that have been put in place. She said who is going to support this. She said who will maintain all of this and somebody asked what this is going to cost and she read in the paper it was something like 5.2 million to build it and supposedly that money is sitting in the county to build it but who is going to maintain it. She said she has been told 140,000 has been allotted that will be coming from tax dollars, however all of a sudden Alcoa is closing down so what is that going to do to our tax base in Warrick County. She said our taxes will go up. She said if they leave us totally our taxes will go up so what is the first thing that will get cut out of the budget. She said is this money appropriated, will that 140,000 really be there, and is that enough to cover all of the expenses. She said this park has not been mowed but every 2 years at the most out of the last 10 years because they don't have the money to do it so it has to come from somewhere.

Gary Meyer, President of the County Council, approached the podium. He said this was approved by the County Council at their first meeting in January to the tune of 5.5 million dollars. He said there was nobody in the audience that opposed this. He said the council felt it was a good project; it was a project that the entire county paid for and it is a chance for the council to give something back to the community. He said it was a 5-2 vote. He said they have also committed to hire people to maintain the area, hire a superintendent to maintain the property so he does not think that is a problem. He said not too often does the council approve 5.5 million dollars and nobody objects. He said it is money that they have in economic development; it is not a bond issue. He said it is money that they have collected from the taxpayers of Warrick County so if they don't spend it they ought to give it back. He said a park is the best thing that they can do for the tax payers of Warrick County.

Howard Nebins, President of Warrick Trails Warrick Wellness Pathways, on the Redevelopment Commission, and on the Executive Board of Economic Coalition of Southwest Indiana. He said he has been on these boards for about 12 years and most of their objective is to try to get people to build a business to come to our area so they have put in sewer lines, electric lines, TIF Districts and Industrial Parks to try to get businesses here. He said now they are trying to get people to move to our area such as the millennials. He said they are competing with Carmel, Indiana, Grand Rapids, Michigan, Louisville....areas that all offer paths and parks for people that want to move to the area. He said millennials now look at an area and question what the quality of life there is, how do they live there, can they exercise, are there parks. He said they will pick that before they go get a job. He said that is important as an economic driver to get people to

move to an area so this park is key central area for the Warrick Trails. He said there will be 30 miles of trails by 2018 and this is the center of it. He said they will tie into it, the schools, Boonville, Lynnville and this is the center of the wheel. He said he thinks this is important that this goes through. He said he lived out in the area when the big fire happened there. He said the reason the fire happened was all of the tall grass; well under this plan it's not going to be tall grass, it will be mowed and taken care of and eliminates the worry of having another brush fire. He said he would appreciate a positive vote.

Tim Kimpel approached the podium. He said the conditions address the maintenance and implementing rules to protect the asset and security; Indiana Code delegates the Park Board to maintain the park property, secure, and implement reasonable rules. He said they do not have the rules yet because the park won't open until spring of 2017 so they have time to develop rules like that. He said they will have public meetings where people can come and make suggestions. He said these conditions address everything that Mrs. Miller made and Mr. Meyer also addressed the funding. He said part of that money is not just for developing the park but also to fund the maintenance, and new equipment that the new employee will use to maintain the park. He said the maintenance area will be fully equipped to maintain that park. He said the decibel level is a slippery slope issue. He said the 75 decibel standard at the property line of the park is in essence adopting a sound ordinance for this piece of property and Warrick County does not have a sound ordinance; they relies on state law that relies on a reasonable standard i.e. on what is a nuisance. He said if you put a decibel level on this park, the people that are asking for it are not bound by it so they could have parties and events and shoot off fireworks. He said it is interesting to know that many of those people live closer to the golf club than to the park. He said Mr. Friedman got a special use so he could operate a country club on that property and they can hold outdoor events, weddings, receptions, musical events, concerts, they shoot off fireworks, they have major golf tournaments. He said so all of a sudden you are creating one spot in Warrick County that has a decibel condition but none of the surrounding properties do. He said what do they set as a reasonable decibel, they are asking for 75 and remember Mrs. Miller was asking about how the park was going to be maintained in order to that you have to mow the grass, saw off limbs, and if you look at decibel and he is looking at the National Institute of Occupational Safety and Health, a power lawnmower 95 decibels; a tractor 90 decibels; snow blower 105 decibels; chainsaw 120 decibels. He said if they put a restriction on the park they will not be able to maintain it. The standard they ask for is a reasonable man standard. He said if a person finds a noise to be a nuisance they can go to the BZA or Park Board, and anybody that uses the park will have to agree in the written user application to not create unreasonable noise or sound. He said if the High School Choir is practicing for an event in the park, how are they going to measure that and who is going to measure it. He said with the reasonable standard if they feel their neighbor is making an unreasonable sound we can call the sheriff and they will investigate it; if it is chronic then they have the right to go to court but in this case he doesn't think it would ever get to that point because they have a public body to go to and work with the Parks Board. He said so he doesn't think placing a decibel limit is fair or reasonable. He said other places with sound ordinances spent a lot of time drafting those. He said in the Evansville ordinance they define noise as being from commercial or industrial sound, so it only controls commercial or industrial sound. He said in fact the statute expressly excludes parades, outdoor concerts, sporting events, fireworks, and other community sounds. He said when you go online and look at the Evansville-Vanderburgh County Park user application, you have to sign an agreement, pay a security

deposit, and in the application you state you will not make any unreasonable sound or music that will disturb users of the park or neighbors. He said that is how they control it and that is how they are proposing to control it. He said so contrary to Mrs. Lockyear, the statute does not set a 75 and in fact sound coming from a park is not regulated by the ordinance; it is regulated by the parks board by their user permit which is the same as what they are proposing.

Mrs. Rector said she thinks Attorney Doll would like to speak to the Board about the conditions.

The Chairman asked if there were any other comments or questions.

Attorney Doll said it would be his advice to the Board that the Parks Department is a co-equal authority in Indiana and we do not have the authority to tell them how to operate their day-to-day operations. He said and conversely they don't have the authority to tell us how to operate zoning in this county. He said that is why the statute created the two different branches to handle the two different potential problems. He said the BZA Board does not have the expertise to deal with day-to-day management issues to how parks are supposed to be run and what decibel levels are acceptable or not. He said it would his advice to the Board to not create a decibel limit because they do not have a way to enforce it and it is not within their jurisdiction to do so. He said this is not the appropriate way to adopt a sound ordinance; if Warrick County wants a sound ordinance there are different ways to do that but it would be adopted county wide, applicable to multiple properties it is intended to regulated but spot zoning of a sound ordinance in a particular case is an inappropriate way to do it; it is probably arbitrary and capricious and in his opinion it would be struck down by a court if challenged. He said he wanted to make it clear that if there are citizen complaints in the future about any of the operational matters of the park, should it be approved, then the BZA Board is not the board they should bring it to; they would bring them to the Parks Department Board. He said if they don't want to that they could take it to court. He said they are not in the business of daily operations of public parks; they are in the business of determining if the proposed use is appropriate in this location and we approve it or we don't. He said had the Parks Department not brought forth the conditions in an agreement, he does not think they would have the authority to assert the conditions that have been submitted to them. He said but they are before them as an agreement so they can accept them as such and incorporate them into the approval if that would be the wishes of the Board. He said he just wants to make it clear to everybody, it is not their responsibility or authority to run public parks and they are not going to do it if he is their council.

Mrs. Rector said so we are just looking at the location for a park.

Attorney Doll said yes.

Jeff Willis asked if they had to approve it with their conditions.

Attorney Doll said they have asked them to so that is the way it is before the Board; with the conditions attached as they are.

Mrs. Rector said it is approving it with the conditions being a part of the application. She said they are not approving it with condition number one, two or three...it is part of the application.

Mike Moesner asked how it is attached.

Attorney Doll said you could consider it as an exhibit to the written application.

Tom Kimpel said we do want those conditions to be part of any approval because it is their intent to comply with them. He said they have worked with the neighbors and they think it is important to provide the screening and so forth. He said 10 years from now when they are all doing other things the Park Board could come back and ask for any modifications and neighbors would get notice.

Mrs. Rector said if they do vote to approve, in their findings under number 7 it could say with conditions as submitted.

The Chairman said he lives two blocks from the American Legion and he wishes they had a noise ordinance sometimes, but by looking at this, nobody can use it later than 10:30 unless it's granted and approved at a public meeting which he is assuming everybody will have to be noticed so they will have a chance to voice their opinion. He said if nobody has anything else he will entertain a motion.

Terry Dayvolt, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.
7. With conditions as submitted.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

2. Subject to all public utility easements and facilities in place.
3. Subject to road construction plans approved by the County Engineer and constructed to county standards.

The motion was seconded by Doris Horn. There were three votes in favor for a total of five in favor, and one opposed being Jeff Valiant, therefor the motion carried.

Mrs. Rector said their approval will be done by Wednesday.

OTHER BUSINESS:

None.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no other business the meeting adjourned at 7:30 p.m.

Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held January, 25, 2016.

Sherri Rector, Executive Director